

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

TIMOTHY A. KRAMER,

Petitioner,
v.
Honorable Thomas L. Ludington

RANDEE REWERTS,

Respondent.

**ORDER TRANSFERRING MOTION FOR A CERTIFICATE OF APPEALABILITY
AND APPLICATION TO PROCEED IN FORMA PAUPERIS TO THE SIXTH CIRCUIT**

On January 31, 2019, the Court entered an order denying the petition for a writ of habeas corpus, denying a certificate of appealability, and denying leave to appeal in forma pauperis. ECF No. 12. Thereafter, Petitioner filed a motion for a certificate of appealability (ECF No. 14), a notice of appeal (ECF No. 15), and an application to proceed without prepayment of fees or costs. ECF No. 16.

The proper procedure when a district court denies a certificate of appealability is for the petitioner to file a motion for a certificate of appealability before the appellate court in the appeal from the judgment denying the petition for a writ of habeas corpus. *See Sims v. U.S.*, 244 F. 3d 509 (6th Cir. 2001)(citing Fed. R. App. P. 22(b)(1)). To the extent Petitioner's motion asks this Court to reconsider its previous decision, reconsideration is improper as Petitioner has made no effort to identify a palpable defect in the Court's reasoning that would have changed the outcome. *See* L.R. 7.1(h)(3). The motion will be transferred to the Sixth Circuit.

The application to proceed in forma pauperis will also be transferred to the Sixth Circuit. It is well settled that the filing of a notice of appeal transfers jurisdiction over the merits of the appeal to the appellate court. *Workman v. Tate*, 958 F.2d 164, 167 (6th Cir. 1992). The petitioner's

notice of appeal divests this Court of jurisdiction to consider his request that he be permitted to proceed *in forma pauperis* in the Sixth Circuit Court of Appeals. *See Glick v. U.S. Civil Service Com'n*, 567 F. Supp. 1483, 1490 (N.D. Ill. 1983).

Accordingly, it is **ORDERED** that the motion for a certificate of appealability (ECF No. 14), and the application to proceed in forma pauperis (ECF No. 16), are **TRANSFERRED** to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 1631.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: March 4, 2019

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney of record herein by electronic means and to **Timothy A. Kramer** #768356, CARSON CITY CORRECTIONAL FACILITY, 10274 BOYER ROAD, CARSON CITY, MI 48811 by first class U.S. mail on March 4, 2019.

s/Kelly Winslow
KELLY WINSLOW, Case Manager